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M.B., Appellant)	
)	
and)	Docket No. 18-1455
)	Issued: March 11, 2019
DEPARTMENT OF THE ARMY, SAUDIA)	
ARABIAN NATIONAL GUARD,)	
Riyadh, Saudia Arabia, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 27, 2018 appellant, through counsel, filed a timely appeal from an April 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish total disability for the period commencing February 9, 2013, causally related to her accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 12, 2012 appellant, then a 62-year-old information technology (IT) specialist, filed an occupational disease claim (Form CA-2) alleging that she developed clinical depression and anxiety as a result of a greatly increased workload and excessive expectations by senior leaders beginning in 2009. She indicated that the working conditions exacerbated her preexisting clinical depression and anxiety and precipitated its worsening. Appellant stopped work on August 21, 2011 due to a nonwork-related condition and returned to full-time modified duties in January 2012. She worked from January 2012 to April 22, 2012 when she stopped completely and remained on sick leave until her retirement on January 12, 2013.

On January 11, 2013 OWCP accepted appellant's claim for exacerbation of major depression, recurrent episode, moderate, and exacerbation of anxiety state, unspecified.

In a report dated May 15, 2013, Dr. Melanie Tew, a Board-certified psychiatrist, noted that appellant's symptoms began in 2009 and that she had attempted to return to work in 2012, but was unsuccessful. She diagnosed major depression and panic disorder. Dr. Tew noted that appellant continually reported symptoms despite aggressive medication management and that appellant was not recovering as she would expect. She questioned whether this was related to a stroke⁴ and opined that appellant's current level of functioning would persist for at least another year such that appellant could not perform any regular work duties. Dr. Tew indicated that appellant's stroke occurred when she had been stressed in a work environment and her anxiety and depression were exacerbated by work stress. She opined that appellant was unable to perform any and all types of work-related daily activities.

On August 1, 2013 OWCP received a claim for compensation (Form CA-7) for total disability for the period February 9 to July 27, 2013.

In a March 10, 2014 report, Dr. Tew treated appellant for anxiety, depression, and panic attacks. She diagnosed major depressive affective disorder recurrent episode, moderate, and anxiety state. Appellant reported that her onset of anxiety had occurred on August 30, 2012. On April 21, 2014 Dr. Tew reported that appellant continued to struggle with anxiety and depression. Appellant reported that she was worried about her disability claim that had been rejected. Dr. Tew

³ Docket No. 15-1638 (issued May 5, 2016); Docket No. 14-1032 (issued November 12, 2014).

⁴ The record indicates that appellant had a subarachnoid hemorrhage in 2011. This has not been accepted as employment related.

noted that appellant was on a leave of absence from working as an IT specialist. She noted an essentially normal psychiatric examination and diagnosed major depressive affective disorder, recurrent episode moderate, and anxiety state unspecified. Dr. Tew opined that appellant continued to be very sensitive to stress and a return to work of any kind would lead to further exacerbation of her depression and anxiety. She opined that appellant's sensitivity to stress, depressive and anxious symptoms were disabling, and appellant should not return to work.

In a separate April 21, 2014 disability statement, Dr. Tew noted treating appellant since August 2012. Appellant reported that her symptoms began in 2009 and she had been unable to work consistently since 2009. In 2012, she unsuccessfully attempted to return to work. Dr. Tew diagnosed major depression and panic disorder. She noted that these conditions were relapsing and remitting. Dr. Tew reiterated that appellant was very sensitive to stress and had mild panic symptoms in minimally stressful situations. She advised that appellant was not recovering as she would expect and wondered if her condition was related to the stroke that she had during the onset of this illness. Dr. Tew noted that appellant was unable to perform all types of work-related activities. She opined that appellant's depression and anxiety caused appellant's disability, that they were most likely triggered by a stressful work environment in 2009, and that her depression and anxiety continue to be disabling. On June 19, 2014 Dr. Tew noted that appellant felt more motivated, and appellant's mood had improved, but she was still very sensitive to stress. She noted appellant's 2011 subarachnoid hemorrhage and her narcolepsy diagnosis 17 years earlier. Dr. Tew diagnosed major depressive affective disorder recurrent episode moderate.

In reports dated January 15 and 21, 2015, Dr. Tew noted treating appellant since August 2012. Appellant reported that her symptoms began in 2009 and she had been unable to work consistently since 2009. Dr. Tew diagnosed major depression and panic disorder relapsing and remitting. She noted that appellant was very sensitive to stress and was not currently able to perform regular work activities. Dr. Tew indicated that appellant's stroke occurred when she was stressed in a work environment and her anxiety and depression were exacerbated by stress at work. She opined that appellant's panic disorder with agoraphobia was the main cause of her disability. Dr. Tew opined that the cerebral vascular accident experienced in 2011 was not the primary cause of appellant's disability and she believed that returning to work would most likely be detrimental to appellant's overall health.

Appellant submitted a transcript of a deposition of Dr. Tew taken on March 19, 2015 in which Dr. Tew noted a history of appellant's treatment since 2012. Dr. Tew opined that commencing in August 2012 appellant had been unable to perform "a real job" in the marketplace. She advised that both appellant's depression and panic disorder contributed to her disability. Dr. Tew opined that appellant's illness was related to extremely stressful work conditions. She opined that the stroke appellant experienced in 2011 was not the cause of her disability from work, rather, she indicated that the stroke resolved. Dr. Tew indicated that the stress of appellant's work was related to her depression and likely caused her depression to become so severe that she could not work. She noted that appellant had a difficult supervisor who was unrealistic in her demands and did not communicate in a manner that was respectful.

By decision dated April 14, 2016, OWCP denied appellant's claim for wage-loss compensation for the period beginning February 9, 2013.

On March 30, 2016 Dr. Tew diagnosed major depression and anxiety. She opined that appellant's conditions were work related and caused significant disability commencing January 2013. Dr. Tew indicated that her illnesses were triggered and exacerbated by stressful experiences at work including excessive criticism, heavy workload, and expectations above her grade level. She advised that appellant continued to experience disabling residual symptoms related to these experiences including fearfulness, excessive worry, depressed mood, panic attacks, poor sleep, fatigue, difficulty concentrating, and poor memory.

On April 18, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative regarding the decision dated April 14, 2016. The hearing was held on December 14, 2016. Dr. Tew testified that appellant was totally disabled due to work-related depression and anxiety. She noted that appellant continue to experience symptoms of the conditions including fearfulness, excessive worry, depressed mood, panic attacks, poor sleep, fatigue, difficulty concentrating, and poor memory. Dr. Tew advised that the 2011 stroke had resolved and had not disabled appellant from work at any time. She indicated that work factors contributed to depression and disabled appellant from work. Dr. Tew noted that appellant was compliant with medical treatment, but the treatment did not yield the hoped for results. She opined that in some patients depression worsens over time and becomes resistant to treatment.

Appellant submitted copies of leave records showing that she used sick leave from August 12 to September 14, 2011, annual leave from October 10 to November 26, 2011, bereavement leave from February 19 to March 30, 2012.

By decision dated January 30, 2017, an OWCP hearing representative affirmed OWCP's April 14, 2016 decision.

On January 26, 2018 appellant, through counsel, requested reconsideration of the January 30, 2017 decision.

In support of the reconsideration request appellant submitted a report from Dr. James Bellard, a Board-certified psychiatrist, dated January 15, 2018. In his report, Dr. Bellard noted that she had anxiety and depression much of her adult life. He noted that appellant's stressors at work caused her depression to significantly worsen in 2009 well prior to the stroke. Dr. Bellard advised that she responded to unreasonable demands by working overtime, which led to severe psychiatric problems well prior to the hemorrhage. He opined that the relationship between subarachnoid hemorrhage and depression remained unclear. Dr. Bellard advised that "one would reasonably expect that an unresolved subarachnoid hemorrhage would cause severe ongoing psychiatric syndromes, including depression, anxiety, and cognitive problems." However, he indicated that radiological documentation revealed that appellant had full resolution of her hemorrhage and the neuropsychological evaluation showed no signs that the hemorrhage had any cognitive effects. However, psychological testing continued to show depression. Dr. Bellard opined that "it is unlikely that [appellant's] subarachnoid hemorrhage contributed to [her] continuing depressive problems, given that it completely resolved." He advised that it was more likely that appellant's lack of response to antidepressant medications lied in the complexity of her situation and how she continued to reexperience the time in Saudi Arabia. Dr. Bellard opined that her stroke had little, if any, effect on her already severely compromised ability to work after April 2012. He noted that appellant's condition worsened overtime leading to total disability by

April 22, 2012. Dr. Bellard provided work restrictions and noted that her prognosis remained poor and she would likely need psychiatric treatment for the rest of her life. He opined that appellant's inability to return to work after April 2012 was not due to her stroke, but depression.

By decision dated April 26, 2018, OWCP denied modification of the January 30, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁶ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁷ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁸

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁹ Furthermore, whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.¹⁰

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical

⁵ *Supra* note 2.

⁶ *See D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁷ *Id.*

⁸ *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁹ *Id.*

¹⁰ *T.O.*, Docket No. 17-1177 (issued November 2, 2018); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ *R.H.*, Docket No. 18-1382 (issued February 14, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹²

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish total disability commencing February 9, 2013 causally related to her accepted employment injury.

In support of her claim for total disability appellant submitted a series of treatment reports and obtained testimony from her attending physician, Dr. Tew. In reports dated May 15, 2013, March 10 and April 21, 2014, January 15 and 21 and March 19, 2015, and March 30, 2016 Dr. Tew noted appellant's employment history, her history of injury, and examination findings and provided diagnoses. She noted that appellant was sensitive to stress, depression, and symptoms of anxiety and that she had reported symptoms and had intermittent periods of disability which began in 2009. Dr. Tew provided diagnoses including major depressive affective disorder, recurrent episode moderate; panic disorder; and anxiety state unspecified. She noted that appellant continually reported symptoms despite aggressive medication management and that she was not recovering as would be expected. Dr. Tew questioned whether her total disability and later her difficulty in recovery from her mental conditions was related to her prior stroke. In May 2013, she noted that appellant could not perform her regular work duties and thereafter consistently opined that she was unable to return to work.

In deposition testimony Dr. Tew opined that appellant had been unable to perform "a real job" in the marketplace from August 2012. She stated that her diagnosed conditions were related to extremely stressful work conditions. In her hearing testimony from December 14, 2016, Dr. Tew stated that appellant had been totally disabled due to work-related depression and anxiety. She stated that appellant's total disability due to depression and anxiety was related to work factors.

The Board finds that the medical reports and testimony from Dr. Tew are insufficient to meet appellant's burden of proof to establish total disability for the period commencing February 9, 2013 and continuing. The issue of disability from work can only be resolved by competent medical evidence.¹⁴ Dr. Tew failed to provide a rationalized medical opinion that appellant's inability to work commencing February 9, 2013 resulted from the accepted conditions in the claim. Rather, she merely provided generalized statements about "stress" in appellant's workplace. While Dr. Tew indicated that appellant was totally disabled from work, she did not specifically explain how the accepted conditions caused or contributed to the claimed period of

¹² *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹³ *See B.K.*, Docket No. 18-0386 (issued September 14, 2018).

¹⁴ *R.C.*, 59 ECAB 546 (2008).

disability. The Board has held that a report is of limited probative value if it does not contain medical rationale explaining how a given period of disability was related to employment factors.¹⁵ Without a specific opinion as to how work factors had caused the claimed period of disability, the opinions expressed by Dr. Tew are insufficient to establish the claim for total disability.

Appellant also submitted a report from Dr. Bellard dated January 15, 2018, in which he noted that her stressors at work caused her depression to significantly worsen in 2009. Dr. Bellard indicated that her anxiety and depression were significantly worsened by “the workplace situation” well prior to her suffering a stroke. He opined that the relationship between appellant’s subarachnoid hemorrhage and depression remains unclear. Dr. Bellard advised that “one would reasonably expect that an unresolved subarachnoid hemorrhage would cause severe ongoing psychiatric syndromes, including depression, anxiety, and cognitive problems.” However, he indicated that radiological documentation revealed that appellant had full resolution of her hemorrhage, but continued to have depression. Dr. Bellard opined that “it is unlikely that [appellant’s] subarachnoid hemorrhage contributed to [her] continuing depressive problems, given that it completely resolved.” He opined that appellant’s stroke had little, if any, effect on her ability to work after April 2012. Dr. Bellard noted that her condition had worsened over time leading to total disability by April 22, 2012. The Board finds that the opinion of him is speculative in nature. In his report, Dr. Bellard opined that the relationship between subarachnoid hemorrhage and depression remained “unclear” and it is “unlikely” that appellant’s subarachnoid hemorrhage contributed to her continuing depressive problems, given that it completely resolved. The Board has held that speculative and equivocal medical opinions have limited probative value.¹⁶

As none of the medical evidence of record provided a discussion of how appellant’s accepted conditions caused total disability during the period in question, she has not met her burden of proof.¹⁷

On appeal appellant asserts that she submitted sufficient medical evidence supporting disability for the period claimed and specifically referenced Dr. Bellard’s January 15, 2018 report. For the reasons set forth herein, she has not met her burden of proof to establish her claim for a period of total disability.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹⁵ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁶ See *Z.B.*, Docket No. 17-1336 (issued January 10, 2019).

¹⁷ To the extent that appellant claims that her disability is causally related to a condition not yet accepted by OWCP (her stroke), she also bears the burden of proof to establish that the new diagnosed condition is causally related to the accepted factors of appellant’s federal employment. The Board finds that neither Dr. Tew or Dr. Bellard provided a rationalized medical opinion supporting a causal relationship between the stroke condition and appellant’s employment duties; see *supra* note 15.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish total disability for the period commencing February 9, 2013 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board